

))

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 621 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

STATE OF GUJARAT

Versus

DAULATBHAI TEKCHAND HARJANI

Appearance:

MR SA PANDYA, APP for Applicant

MR KJ SHETHNA for Respondent No. 1

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 18/03/99

ORAL JUDGEMENT

Heard Mr.S.A.Pandya, learned APP for the applicant-State and Mr.K.J.Shethna, learned advocate for the respondent.

2. The State has preferred this Criminal Revision Application against the order passed by the Addl. Sessions Judge, Vadodara, in Criminal Revision Appln. No.194/98, dtd.12.8.98 wherein, the learned Addl. Sessions Judge has set aside the order of learned

J.M.F.C. passed in City Police Station C.R. No.I 81/98, wherein the learned J.M.F.C. had granted one day remand to the present respondent-accused i.e. dtd.11.8.98 from 11.00 a.m. to 5.00 p.m. I have been told by the learned APP for the State that same order of J.M.F.C. has been stayed by the Learned Addl.Sessions Judge during the course of the day by way of interim order dtd.12.8.98 passed in Criminal Revision Appln. No.194/98. That means that the above order had never come in operation.

3. Before I decide further in the matter, few points are relevant. First that the I.O. has submitted application on 3.7.98 before the learned J.M.F.C., Vadodara and requested for police custody of the respondent-accused for a period of 10 days. To my surprise same remand application had been decided by the learned J.M.F.C after a period of one month in such a serious offence. It was the duty of the learned J.M.F.C. to decide it on the spot. Instead of doing so, reasons best known to him for not deciding an application for a period of one month and then also after one month, he has granted police remand for a period of one day, inter-alia, that is also for a period from 11.00 a.m. to 5.00 p.m. That means time of taking accused from the court and when reached to the police station and bringing back into the court within stipulated time then definitely above granted time will be over, and therefore, this type of order is nothing but an eyewash and for that also the learned Magistrate had taken a period for more than one month. It is nothing but miscarriage of justice on the part of the learned Magistrate, and therefore, this type of practice is required to be deprecated. If he is not convinced with the reasons mentioned in the application submitted by the I.O. for police custody, then it is his duty to reject the same and if he is convinced with the reasons mentioned in the application then it is his duty to grant the police custody of the accused for a reasonable period, but, this type of eyewash order should not be passed by the court just to make a show that there is a case for granted the police custody and then also he has grant police custody in such a fashion which ultimately amounted to rejecting the application is not proper and justifiable on his part.

4. Against that order, respondent-accused had preferred Criminal Revision Application No.194/98, on 6.8.98, in the court of the learned Addl.Sessions Judge, Vadodara. The learned Addl. Sessions Judge had allowed the said application of the respondent-accused and set aside the order of the learned J.M.F.C. The third

shocking stage came when the learned APP of the trial court has applied for certified copy of that order on 3.10.98 i.e. admittedly after two months, and thereafter the matter came to the High Court. In short, today the learned APP is pressing for remand after a period of eight months and if one consider the date of offence then after a period of 12 months by this time investigation must have been over at this stage. In view of the above facts and circumstances of the case, this revision application for police custody of the accused came up before this court after a period of 12 months. If I allow this application then also no purpose will be served at this stage and court should not directly or indirectly encourage this type of negligence or irregularity which has been done at their end which is absolutely not proper and justifiable. It is the duty of each and every concerned person who is connected with the case of the prosecution that they should act in such a manner so that there should not be any delay on their part which is required to be explained later on by them and absolutely is not in the interest of the prosecution. Even Legal Department, and in turn, Home Department should also think over the problem and in this type of matter they should permit the concerned I.O. or concerned APP to approach the High Court and formality regarding granting sanction etc., should be arranged in such a manner, so, on that count delay may not occur or it should be granted on telephone or by way of fax message. In my opinion, this is not the negligence on the part of the prosecution but it is well designed so that ultimately they will be in a position to show their face that they have tried their level best but could not succeed in this type of matter.

5. The trial court should not take much time for remand application. It is their duty to give top priority on such type of application and decide if possible on the spot, if not possible, then on same day and if not then next day, but, it should not be prolonged in any circumstances of the matter, it is nothing but denial of justice on their part. If anybody fails to discharge their duty then definitely they will be answerable.

6. In a particular case, the learned APP of the trial court has not applied for certified copy for a period of two months. In this type of cases, it is the duty of the learned APP to apply immediately and also to see that it should be available to the prosecution as early as possible. Instead of doing so, the learned APP has waited for a period of two months, and therefore, the

above act of the learned APP is not justifiable in any circumstances of the matter. Therefore, I direct the Legal Department to inquire into the matter and ask explanation of the learned APP of the trial court, if it is not found satisfactory, then hold inquiry and decide the same according to law so in future this type of things are not taken place anywhere in the State of Gujarat.

7. In the facts and circumstances of the case, the Criminal Revision Application is rejected. Copy of this judgment will be sent to the Legal Department, Home Department and Chief Secretary, State of Gujarat for taking appropriate steps in future and inform the court accordingly.

8. The respondent-accused is directed to give co-operation to the I.O. and for that the learned counsel for the respondent has submitted before the Bar that the respondent-accused shall remain present before the I.O. on Monday 22.3.99 at 11.00 a.m. in City Police Station, Vadodara.

Rule is discharged in aforesaid terms.

syed/